# IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 2 OF 2006

THE GOA STATE CO-OPERATIVE BANK LTD. THROUGH ITS MANAGING DIRECTOR SHRI ANANT VITHAL SHINDE, PANAJI ....Petitioner

Versus

BHARATI TOURISM DEVELOPMENT CO-OPERATIVE LTD. BY ITS MANAGING DIRECTOR SHRI SUBHASH S. HALARNEKAR, ....Respondent

Mr. S. N. Joshi,Advocate for the Applicant.

Coram:- R.M.S. KHANDEPARKAR, J.

Date:- 10th February, 2006

P.C.:

Heard the Advocate for the Petitioner.

2. The petitioner challenges the Order dated 25th November, 2005 whereby the trial Court has dismissed the appliction for rejection of the plaint which was filed under Order VII, Rule 11 on the ground that the plaint did not disclose the cause of action and that the suit without prior notice under Section 115 of the Multi State Cooperative Societies Act, 2002 is not maintainable and no such notice had been given and thirdly that in terms of Section 84 of the said Act the parties can approach the Arbitrator in relation to the dispute between the parties. The trial Court has rejected the application holding that the dispute between the parties is not in relation to the business of the petitioner-Cooperative Bank nor that the notice under S.115 was required to be served prior to filing of the suit and that the plaint disclosed cause of action.

3. Upon hearing the learned Advocate and perusal of the record it is

seen that the premises which were in occupation of the respondent were allowed to be occupied by the petitioner under letter dated 26th October, 2004 on leave and licence basis for a period of five years, subject to payment of rent. Since under letter dated 4th October, 2005 the petitioner on the ground that they want to instal agricultural and rural development sections or ATM branch of the Bank at the place in occupation of the respondent, directed the respondent to vacate the premises within 15 days, further threatening to initiate action for their eviction in case of their failure, that the respondent filed a suit for injunction to restrain the petitioner from evicting the respondent from the suit premises without due course of law and also filed an appliction for temporary injunction and, thereafter, the application under Order VII Rule 11 filed by the petitioner came to be dismissed by the impugned order. Perusal of Section 115 of the said Act provides that:- " No suit can be instituted against the Multi State Co-operative Society or its officers in respect of any act touching the constitution, management or the business of the Society until the expiration of ninety days next after notice in writing has been delivered to the Central Registrar or left at his office, stating the cause of action, the name, description and place of residence, of the plaintiff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left. " Section 84 of the said Act deals with the subject of reference of disputes and sub-section (1) thereof is on the line with Section 91 of the Maharashtra Cooperative Societies Act, 1961 as applicable to Goa. Apparently it speaks of reference of the matter in respect of the dispute touching constitution, management or the business of the Society arising between the parties specified therein. Undisputedly, in the matter in hand the respondents were inducted in the premises in question by the petitioner and now the petitioner is seeking to evict them therefrom. In the circumstances, therefore, whether the subject matter of the suit relates to the business or management of the Multi State Cooperative Society i.e. the petitioner, and on that count notice would have been necessary or that reference of dispute is required in terms of Section 84 of the said Act are the points to be decided after framing proper issues in that regard and merely on such objections being raised,

the Court could not have rejected the plaint. Being so, no fault can be found in the impugned order dismissing the application filed by the petitioner. There being no error committed by the Court below touching the exercise of jurisdiction of the trial Court, there is no case for interference. There is no case made out for exercise of jurisdiction under Section 115 of the Civil Procedure Code and therefore the Civil Revision Application is rejected.

R.M.S. KHANDEPARKAR, J.

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